



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **BIR/00FN/HIN/2023/0038**

**Property** : **56A Cedar Road, Leicester LE2 1FF**

**Applicant** : **Mr Sunil Chopra**

**Respondent** : **Leicester City Council**

**Representative** : **Ms Emily Mulligan**

**Type of application** : **Appeal against a Prohibition Order issued under the Housing Act 2004**

**Tribunal member** : **Judge C Payne  
Mr R Chumley Roberts MCIEH**

**Date of Inspection** : **31 January 2024**

**Date of decision** : **23 August 2024**

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**DECISION**

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## **Decision**

The Tribunal determines that the Prohibition Order dated 8 August 2023 in respect of 56A Cedar Road, Leicester LE2 1FF be quashed.

## **Background**

1. On 8 August 2023, Leicester City Council (“the Council”) issued a Prohibition Order (“the Order”) in respect of 56A Cedar Road, Leicester LE2 1FF (“the Property”), operative from 6 September 2023, prohibiting the use of the Property for human habitation. The order identified three hazards, Fire, Damp & Mould and Electrical.
2. On 1 September 2023 Mr Chopra appealed against the Order.
3. Both parties provided statements of case in accordance with Directions made by the Tribunal dated 22 September 2023, and the case was listed for an inspection and paper determination.
4. An inspection of the Property took place on 31 January 2024 with Mr Sunil Chopra, the Applicant and Mr Sam Singh in attendant to support him. Ms Mulligan and Ms Louise Wilkins attended on behalf of the Council.

## **Law**

5. Before commencing our examination of the facts and issues in this case, we set out the legal framework which the Tribunal will apply.
6. The Respondent is responsible, under statute, for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance with the standards required. The scheme is called the Housing Health and Safety Rating System (HHSRS). It is set up in the Housing Act 2004 (“the Act”), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 (“the Regulations”).
7. The scheme set out in the Act is as follows:
  - a. Section 1 (1) provides for a system of assessing the condition of residential dwellings and for that system to be used in the enforcement of housing standards in relation to such premises. The system (which is the HHSRS system) operates by reference to the existence of Category 1 or Category 2 hazards on residential premises.
  - b. Section 2 (1) defines a Category 1 hazard as one which achieves a numerical score under a prescribed method of calculating the seriousness of a hazard. A Category 2 hazard is one that does not score highly enough to be a Category 1 hazard. The scoring system is explained later.

- c. "Hazard" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling.
8. Section 4 of the Act provides the procedure to be followed by a local authority before commencing any enforcement action. If the local authority becomes aware that it would be appropriate for any property to be inspected with a view to determining whether a hazard exists, it must carry out an inspection for that purpose.
9. The right to carry out the inspection is derived from section 239 of the Act. This section gives the local authority a power of entry for the purposes of carrying out a section 4 inspection. The inspector must have been properly authorised to carry out that inspection, and (in sub-section 5), the authorised officer must have given at least 24 hours' notice of his (her) intention to inspect to the owner (if known) and the occupier (if any).
10. Section 5(1) of the Act provides that:

“If a local authority consider that a category 1 hazard exists on any residential premises, they have a duty to take the appropriate enforcement action in relation to the hazard”.
11. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:
  - Improvement notice
  - Prohibition order
  - Hazard awareness notice
  - Emergency remedial action
  - Emergency prohibition order
  - Demolition order
  - Declaration of a clearance area
12. Section 5(3) says that if only one course of action within Section 5(2) is available to the authority in relation to the hazard, they must take that course of action. Section 5(4) says that if two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.
13. By section 7 the authority has a power (but not a duty) to take action in respect of a category 2 hazard. The enforcement options for a category 2 hazard are slightly different from the options for a category 1 hazard, but they include the power to issue an Improvement notice, make a Prohibition Order, or issue a Hazard Awareness notice.

14. Section 20 of the Act gives greater detail of the requirements for a Prohibition Order for a category 1 hazard if the local authority decides to issue one (and they must take some form of remedial action under section 5 above). If the premises are an HMO or a dwelling, the local authority may prohibit the use of the dwelling or the HMO. Section 21 allows a Prohibition Order to be made in respect of category 2 hazards.
15. Section 22 specifies that a Prohibition Order must specify:
  - a. Whether the notice is served under section 20 or 21 of the Act
  - b. The nature of the hazard and the residential premises on which it exists
  - c. The deficiency giving rise to the hazard
  - d. The premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action, and
  - e. Any remedial action which the local authority considers appropriate in view of the hazard or hazards in respect of which the order is made.
16. Section 22(4) gives the local authority the power to specify whether the prohibition is for all purposes or for a particular purpose.
17. Section 24 provides that the Prohibition Order comes into effect at the end of 28 days beginning with the date the Order is made.
18. Section 23 permits the suspension of a Prohibition Order and section 25 provides for revocation or variation of a Prohibition Order. The local authority must revoke an Order if at any time they are satisfied that a hazard in respect of which the Order was made does not exist on the premises.
19. Schedule 2 Part 3 of the Act deals with appeals in relation to Prohibition Orders. Paragraph 7 sets out a general right of appeal and that an appeal is to what is now the First-tier Tribunal (Property Chamber).
20. Paragraph 11 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The tribunal may confirm, quash, or vary the Prohibition Order.
21. Section 9 of the Act provides that the UK Government may give guidance to local authorities about exercising their functions (including in relation to enforcement by a Prohibition Order). The local authority must have regard to the guidance. Guidance on enforcement has been issued, dated February 2006.
22. Turning to the method of determining whether a category 1 or category 2 hazard exists (i.e., the operation of the HHSRS), this is set out in the Regulations. The procedure is summarised as follows:
  - a. There are 29 specific hazards that are identified in Schedule 1 of the Regulations as risks, and these are known as “prescribed hazards”.

- b. The first step is for an assessor to establish, in relation to a prescribed hazard, the likelihood, during the period of 12 months beginning with the date of the assessment, of a relevant occupier suffering any harm as a result of that hazard. Guidance under s9 of the Act gives national average likelihoods for each prescribed hazard but the assessor makes an individual assessment.
- c. The assessor's assessment of the likelihood is converted into one of 16 representative scale points on a range of likelihoods, 1:1 (i.e., certain) to 1:5600 (i.e., very unlikely). The scale points are set out in paragraph 6 of the Regulations.
- d. The second judgement for the assessor is the possible harm outcomes, that could affect a person (who is a member of the most vulnerable group) as a result of the hazard actually occurring. This is done by assessing the range of outcomes (of which there are 4 distinct classes) by means of the average spread of harms for each dwelling type (which are provided in operating guidance) and the characteristics of and conditions at, the individual dwelling. Each of the 4 classes of harm are attributed a representational scale point which are the harm outcome scores.
- e. The assessor then uses the two judgements made (the representational scale point for the likelihood of harm for the prescribed hazard and the four harm outcome scores) to produce a single hazard score using a formula set out in Regulation 6(5). Most assessors will use a computer model for this calculation.
- f. The hazard score will be a single integer. That integer identifies the hazard as a category 1 hazard if the integer is 1,000 or more, and a category 2 hazard if the integer is less than 1,000. Each hazard is also prescribed a band, between A and J according to its actual calculated score, as set out in paragraph 7 of the Regulations.

### **The Inspection**

- 23. The Property is a ground floor, self-contained, "studio" flat, provided by conversion, at the rear of the original two story, "back of pavement" house.
- 24. The dwelling comprised of an "open plan" front bedroom area, rear lounge/kitchen area and a separate rear (right) bathroom (containing a water closet, wash hand basin and shower). Hot and cold water was provided to the kitchen sink and bathroom basin and shower. The only access is through the lounge and kitchen area from the rear of the Property.
- 25. Space heating is provided by an electrical storage radiator in the lounge area, an electrical convector heater in the bedroom area and an electrical down flow "fan" heater in the bathroom.

26. Mechanical extract ventilation devices were provided in the rear bathroom and in a hood over the cooking appliance. There appeared to be functioning interlinked smoke and heat detectors in the bedroom and kitchen areas.

## **Discussion**

27. Our task is to determine, should we be persuaded that hazards exist at the Property, the most appropriate enforcement action to take. The Council decided to issue a Prohibition Order. On appeal we have to decide on a rehearing, what enforcement action we think should be taken. We should attach weight to the Council's conclusion. We should make the decision as at the date of our decision and so in the circumstances that pertain now, rather than as if we are remaking the decision on the date it was made.
28. Our decision should be taken following, and as a result of the findings of, an assessment of whether any category 1 or category 2 hazards exist at the Property under section 4 of the Act.
29. We now turn to the decision to make a Prohibition Order rather than take any other enforcement action.
30. A Prohibition Order is a draconian step. The Enforcement Guidance clarifies that factors that should influence the decision to make a Prohibition Order can properly include a situation where the conditions pose a serious threat to health and safety, but remedial action is considered unreasonable or impractical for cost or other reason, including impracticality of work being carried out whilst an occupier is in residence. None of the other circumstances set out in paragraph 5.21 of the Guidance for use of a Prohibition Order seem to apply to this case, in our view.
31. We address each of the three hazards to consider whether they pose a serious threat to health and if so, what practical steps could be taken to remedy them:

### **Category 1 Hazards**

#### **Hazard Profile 24 - Fire**

32. The tribunal examined the calculations which resulted in the classification of the hazard from fire as being a category 1 hazard, provided in the Respondents evidence. With the results of its inspection, the tribunal determines that this hazard has been substantially "overscored".
33. The premises are small in area and has working interlinked smoke and heat detectors in the bedroom and kitchen areas. The Housing Health and Safety Rating System (HHSRS) operating guidance is clear that such alarms "probably do more to save lives in the event of fire."
34. The cooking and heating facilities provided are all electrical so there are no open flames. The operating guidance advises that over 80% of accidental

fires result from occupier carelessness or misuse of equipment or appliances etc. whilst “half of dwelling fires are related to cooking appliances, with over 30,000 reported fires per year. However, these fires have a relatively low injury rate, and result in 2 deaths per 1000 reported cases for electrical cookers and 4 deaths per 1000 reported cases for gas cookers....”

35. In their HHSRS calculation, the Respondent’s justification for a high “likelihood score of in 18 (down from the national average of 1 in 3200) is that there is no protected escape route from the bedroom area, as there is no window (in the bedroom area) and access to the final escape door requires an occupier to pass through a risk room (the kitchen area).
36. In reality the maximum distance of travel from any point in the dwelling to the final escape door was measured as 9.38 meters. This was from the front wall of the bedroom area. The LACORS guide “Housing – Fire Safety” observes that a maximum of 9.0 meters travel distance to the final escape door was previously considered acceptable, but made the observation that “this is a useful reference but need not be applied as a rigid standard and may be increased or decreased depending upon the level of risk once appropriate fire prevention measures have been put in place”.
37. The tribunal measured the width of the travel route to the final escape door past the kitchen facilities (between the cooking appliance and the wall enclosing the bathroom) as just over 2.0 meters. Accordingly, an occupier leaving the premises would not need to pass immediately by the cooking appliance.
38. Given the above and in the knowledge of the presence of suitable smoke and heat detectors the tribunal’s assessment of the “likelihood” of an event over the next 12 months is 1 in 180.
39. In their HHSRS calculation, the Respondent states that they have increased the value of the “Harm outcomes” (of any event) over classes 1, 2 and 3 “due to the outcome becoming higher as it would affect the escape route”. This appears to the Tribunal to mean that the Respondent considers greater harm would occur to an occupier, than would statistically be expected, due to the occupier passing the kitchen facilities to exit the dwelling. The Tribunal disagrees with this across-the-board increase but can understand why the class 2 harm figure may be raised, as there could possibly be more severe burns if an incident occurred. According in its determination the class 2 harms figure has been raised to 0.1 (from 0.0)
40. Accordingly in its assessment of the hazard score for Fire the tribunal obtained a score of 336.16 i.e. a band E – Category 2.

#### *Hazard Profile 1 - Dampness and Mould Growth*

41. During the inspection, the Tribunal noted that the dwelling was free of penetrating dampness and, save for minor areas like silicone sealant, substantially free of any evidence of mould growth. It was clear to the

tribunal that repair, cleaning and possibly antifungal works had taken place. Accordingly, the Tribunal cannot give an opinion on the hazard status (i.e. category 1 or 2 hazard) at the time the prohibition order was made and served.

42. From the remedial works listed in schedule 2 to the prohibition order only item 2, which requires the Applicant to provide facilities for the occupants to be able to open and close the skylight when needed, had not been addressed. This opening device is clearly necessary and will provide an additional facility for any future occupiers to control condensation dampness.
43. Given the absence of dampness and mould growth at the premises at the time of the inspection and the presence of suitable mechanical extract ventilation, the Tribunal considers that this matter is now a category 2 hazard, with a hazard score 27.15 (i.e. a band H).

### **Category 2 Hazards**

#### **Hazard Profile 23 – Electrical Hazards**

44. The only remedial works listed in schedule 3 to the Prohibition Order, requiring replacement of the existing fan in the shower cubicle for a suitable extractor fan with a minimum I1P65 rating, has been undertaken by the Appellant. Accordingly, this part of the Prohibition Order has been complied with and no further works, in respect of this hazard profile, are required.

### **Discussion**

45. Based on the discussion set out above, the Tribunal finds that a Prohibition Order is not the most appropriate enforcement action in the light of the evidence about the hazards at the Property that have been the subject of this case and the statutory guidance. In the Tribunal's view the Prohibition Order is disproportionate. The Tribunal does not consider it necessary for occupants to vacate the Property in order for remedial works to be carried out. The Tribunal's decision is therefore that we quash the Order.
46. This determination is as far as the Tribunal can go in relation to its powers in paragraph 11 of Part 3 of Schedule 2 of the Act. However, the Tribunal offers some thoughts about the next step in the hope that this assists both parties.
47. A review of the Tribunal's discussion above will show that in general terms we do not consider the Property yet justifies a clean bill of health. In the Tribunal's view, the Council would be justified in conducting a further inspection with a view to assessing the Property again under the HHSRS



system. In our view, any hazards identified in any further inspection could most probably be dealt with by an Improvement Notice.

## **Appeal**

48. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Payne  
Chair  
First-tier Tribunal (Property Chamber)